



PA 20-9, September 2020 Special Session—HB 7001

Emergency Certification

**AN ACT REVISING PROVISIONS OF THE TRANSFER ACT AND
AUTHORIZING THE DEVELOPMENT AND IMPLEMENTATION OF A
RELEASE-BASED REMEDIATION PROGRAM**

SUMMARY: This act transitions the state from its transfer-based approach to property remediation (i.e., the “Transfer Act”) to a release-based approach. The release-based approach becomes effective when the Department of Energy and Environmental Protection (DEEP) commissioner adopts the regulations described below. The act generally applies the release-based system to releases (e.g., spills) created or maintained once these regulations are adopted. Properties subject to the Transfer Act on or before this date generally remain subject to it until they fulfill its requirements.

The state’s Transfer Act requires the disclosure of environmental conditions when certain properties or businesses, referred to as “establishments,” are transferred. It generally applies to properties on which, or a business operation from which, (1) hazardous waste was generated or processed or (2) a dry cleaning, furniture stripping, or vehicle body repair business operated. The law sets out several specific exemptions from its requirements (CGS § 22a-134 *et seq.*).

Depending on the property involved, the Transfer Act may require investigation; monitoring; or remediation in compliance with the state’s clean-up standards, known as the Remediation Standard Regulations (RSRs) (Conn. Agencies Regs., §§ 22a-133k-1 to -3). When an establishment is transferred, one of four forms must be filed with DEEP (i.e., Forms I, II, III, or IV), and the person signing the form’s certification is responsible for the property’s conditions. The type of form that must be filed depends on the environmental condition and investigation, if any, of the property.

Under the act, the DEEP commissioner must adopt regulations for reporting and remediating releases of oil, petroleum, chemical liquids or solids, liquid or gaseous products, or hazardous waste to the land or waters of the state. The regulations must include provisions about remediation supervision, verification, auditing, and any required fees. They must also provide tiers of releases, based on risk, that assign the required level of supervision and verification for each tier. The act establishes a working group to provide advice and feedback about the regulations.

Separately, the act makes many changes to the Transfer Act. Principally, it (1) eliminates or modifies several exemptions to the definition of “transfer of establishment” and (2) limits the circumstances under which certain parcels are deemed to be establishments. It also exempts conveyances of units in residential common interest communities from the definition of “transfer of establishment”

and instead requires declarants (i.e., developers) to take certain actions before conveying units in communities that are establishments.

Additionally, the act replaces several references to “environmental land use restrictions” (ELURs) with references to “environmental use restrictions” (EURs), which appears to conform to proposed revisions to DEEP regulations. It also makes minor changes to Form IV’s required contents to conform to DEEP regulations. Lastly, the act makes minor, technical, and conforming changes, such as adding internal references (§§ 1 & 6-8).

EFFECTIVE DATE: Upon passage

§§ 15-23 — NEW RELEASE-BASED REMEDIATION PROGRAM

General Requirements and Applicability (§§ 16 & 17)

The act prohibits any person from creating or maintaining a release to the land and waters of the state in violation of the act’s release-based remediation requirements. A person that does so must, upon its discovery, report and remediate the release according to procedures and standards in new regulations the act requires DEEP to adopt (see “Required Regulations,” below). Failing to comply with the reporting and remediation requirements, and any associated regulations, makes a person liable for costs the DEEP commissioner or another person incurs to contain, remove, or mitigate any of the release’s effects.

The act generally exempts releases that must be investigated and remediated under the Transfer Act from having to meet the act’s new release-based remediation requirements. However, releases on Transfer Act properties are subject to the new requirements if they occurred before a property transfer form was filed and they were not discovered until (1) after the commissioner approved the remediation, (2) the date of a Form III or IV verification, or (3) the date of a Form I or II filing.

Releases occurring after the filing of a property transfer form generally must follow the act’s new release-based remediation requirements, but if a Phase II investigation (i.e., often involving soil or groundwater samples) occurs after filing a Form III or Form IV, then only releases happening after the investigation are subject to the new requirements.

The act specifies that, on its own, release data available or created before the regulations’ adoption do not trigger the release-based requirements. Additionally, the act excludes from these requirements certain releases at properties that are part of an existing DEEP or Department of Economic and Community Development (DECD) brownfields program. The exclusion applies to releases (1) discovered before the applicable brownfields program’s remediation requirements are fully met or (2) that occurred before, but are discovered after, satisfying the brownfields program’s remediation requirements. Releases occurring after fully meeting a brownfields program’s requirements are subject to the new provisions.

Definitions (§ 15)

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Under the act, a “person” includes an individual; a firm, partnership, association, corporation, or limited liability company (LLC); the federal government; the state or an instrumentality or subdivision of the state, such as a municipality or its organizations with authority to levy and collect taxes; or other entity.

“Person” also includes a firm’s, partnership’s, association’s, or corporation’s associated officer or governing or managing body or an LLC’s associated member or manager if the officer, body, member, or manager:

1. is in a position of responsibility that allows for influencing corporate policies or activities;
2. influenced the corporate actions or failures to act that caused a violation of the act’s release-based provisions; and
3. facilitated the violation.

A “release” is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of oil, petroleum, chemical liquids or solids, hazardous waste, or liquid or gaseous products into or onto any waters and land surface in the state that is not authorized under the state’s environmental protection laws. The definition explicitly excludes automotive exhaust and fertilizer or pesticide application consistent with its labeling.

“Remediation” refers to (1) determining a release’s nature and extent according to prevailing standards and guidelines and (2) containing, removing, and mitigating a release, including reducing pollution by monitoring natural attenuation (i.e., reducing contaminants without human intervention).

Regulations (§ 19)

The act requires the DEEP commissioner to adopt, amend, or repeal regulations, as needed and proper, to carry out the new, release-based remediation program. It establishes a working group in DEEP to provide advice and feedback on the regulations.

Further, in adopting the regulations, the act requires the commissioner to incorporate the requirements of other clean-up provisions set in state law to assure consistency, clarity, and efficiency when applying remediation requirements.

Working Group. The act’s working group must be co-chaired by the DEEP and DECD commissioners, or their designees, and includes the following additional members:

1. chairpersons and ranking members of the Environment and Commerce committees;
2. environmental transaction attorneys;
3. commercial real estate brokers;
4. licensed environmental professionals (LEPs);
5. representatives of (a) the Connecticut Manufacturers’ Collaborative, (b) environmental advocacy groups, (c) the Environmental Professionals Organization of Connecticut, (d) municipalities, (e) the Brownfields Working Group (see BACKGROUND), (f) the Connecticut Conference of

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Municipalities and the Connecticut Council of Small Towns, and (g) the Council on Environmental Quality; and

6. any other interested members of the public the DEEP commissioner designates.

The DEEP commissioner must convene the working group's meetings. The group must meet monthly until the commissioner adopts the regulations.

Regulation Content. The regulations must include at least the following components:

1. release reporting requirements, including threshold reportable quantities and concentrations;
2. remediation procedures and deadlines, including public participation;
3. remediation standards, including EURs;
4. verification and commissioner remediation audits;
5. remediation supervision, based on (a) pollutant type, concentration, or volume or (b) harm to public health; and
6. any required fees.

The regulations must also provide separate tiers of releases based on risk, which the commissioner determines, and on the following release aspects:

1. existence, source, nature, and extent;
2. nature and extent of the immediate and future danger to public health, safety, welfare, and the environment;
3. magnitude and complexity of the actions needed to assess, contain, or remove it;
4. whether the proposed remediation will leave behind pollutants that need to be managed through risk mitigation; and
5. how much oversight the commissioner needs to provide to ensure compliance with the act.

Depending on the tier involved, the act provides that an LEP may supervise the remediation of certain releases without verification or commissioner supervision. LEPs are DEEP-licensed individuals who are qualified to engage in activities and client services associated with investigating and remediating pollution and pollution sources (CGS § 22a-133v). "Verification" refers to an LEP's written opinion on a commissioner-prescribed form that a release's remediation meets the applicable standards.

Reporting Releases (§ 19)

Type and Timeframe. The act requires the commissioner to specify in the regulations the types of releases that must be reported and the timeframe for doing so.

The act allows for the regulations to have reporting timeframes based on release risk level. Specifically, they may apply the quickest reporting time requirement to releases that (1) pose an imminent or substantial human health or environmental threat, such as those in residential areas, parks, and schools; (2) are a higher risk to human health or the environment; or (3) are near drinking water supplies. The regulations must also provide a way to amend or retract an

erroneous release report.

Exemptions. The act allows for the regulations to exempt a release from being reported if, once it is discovered, it can be remediated (1) by containment, removal, or mitigation and (2) in a time and manner the regulations set. The regulations must, however, require the person cleaning up the property to keep certain records according to a specified schedule.

The act also exempts from reporting under its provisions releases that already must be reported to DEEP by vessel masters, people responsible for loading and unloading terminals, vehicle operators, and others under an existing water pollution control law.

Remediation Standards (§ 19)

The act requires the DEEP commissioner to do the following when establishing the standards that must be met when remediating releases:

1. consider DEEP's existing standards for remediating pollution at hazardous waste disposal sites and other properties that were subject to a spill;
2. give preference to permanent cleanup methods, if feasible;
3. provide flexibility, when appropriate, for LEPs to establish and implement risk-based alternative cleanup standards that consider site use, exposure assumptions, geologic and hydrogeologic conditions, and the released substance's physical and chemical properties;
4. consider groundwater classifications and any other factor she deems appropriate; and
5. provide less stringent standards than what is needed for residential land use under certain conditions and specify the types of industrial or commercial land uses for which the property may be used after remediation.

The less stringent standards are for sites in areas with (1) a GB or GC groundwater classification that are historically used for industrial or commercial purposes; (2) no commissioner order, consent order, or stipulated judgment concerning the release; and (3) an EUR executed after remediation.

Release Database (§ 17)

The act requires DEEP to provide, within available resources, a publicly accessible, online database for all submitted release reports and verifications. The database must enable document searching and electronic document submission. If the database is not available when the regulations are adopted, the act requires that DEEP have a progress update published in the *Environmental Monitor*.

Verification Audits (§§ 19 & 20)

Purpose. The act requires the DEEP commissioner to audit enough verifications to ensure (1) protection of human health and the environment and (2) a high frequency of compliance with the regulations.

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Audit Types. Under the act, the adopted regulations must use multiple auditing levels and prioritize auditing higher risk releases that may harm human health or the environment. The auditing levels may include the following:

1. screening documents or forms submitted to DEEP;
2. a thorough evaluation of the verification that includes a property inspection or request for additional information about a release's investigation or remediation; and
3. a targeted audit of specific issues identified in screening documents or forms, conditions of a particular release, or issues that present a higher risk to human health or the environment.

Number of Audits. The regulations must also authorize the commissioner to audit any verifications and set goals for how many audits she must conduct. The audit goals must be at least (1) 20% of verifications for releases from at least one tier and (2) for the other tiers, at a frequency based on how many verifications are submitted for releases in each tier.

Timeframes. The act requires that the regulations establish timeframes for beginning audits. The timeframes must be within one year after verification.

Reporting. Starting two years after the regulations' adoption, the commissioner must begin annually reporting to the governor and the Environment and Commerce committees on the verification audits and post the report on DEEP's website. The report must include, for the previous year, the number of reported releases; the number of submitted verifications and conducted audits; audit results; and any recommendations to improve the audits, such as staffing levels or audit adequacy.

Reopening a Remediation (§ 19)

Under the act, the regulations must allow for a remediation to be reopened in any of the following six situations:

1. The DEEP commissioner has reason to believe that a verification was based on materially inaccurate or erroneous information, or other misleading information or misrepresentations.
2. The commissioner determines based on information that remediation may have failed to prevent a substantial public health or environmental threat.
3. The commissioner determines that there is a violation of the act's release-based remediation provisions.
4. The submitted verification was the result of a commissioner's order to remediate a release (see below).
5. A verification that relies upon an ELUR was not recorded in the applicable municipal land records.
6. Required post-verification monitoring or operations and maintenance are not complete.

Commissioner-Ordered Remediation (§ 18)

The act authorizes the DEEP commissioner to order a person to comply with

the release program requirements if she finds that the person created or maintained a release to the land or waters of the state on or after the date regulations are adopted. The order must provide (1) why it was issued and (2) a reasonable time to comply. If more than one person is listed on the order or is responsible for the violation, each person is jointly and severally liable.

Under the act, the order must be served by (1) certified mail, return receipt requested, or (2) a state marshal or indifferent person, who must serve a true copy of the order and file the original, with the endorsed return of service, with the commissioner. An order is issued either upon service or when mailed.

An order recipient has a right to a hearing, but if the recipient does not request a hearing within 30 days after the order's issuance, the order is final. Under the act, a person may only appeal an order if it requested a hearing.

The act also requires the commissioner to have a certified copy of the final order filed on the land records in the municipality where the release is located. When the order is complied with or revoked, she must similarly have a certificate filed showing this fact.

Violations & Penalties (§ 18)

Cease and Desist Order. Under the act, the DEEP commissioner may, after an investigation but without a prior hearing, issue a written cease and desist order to a person that is improperly creating or maintaining a release. She may do so only if (1) the violation is substantial and continuous and (2) it would prejudice the interest of the state's people to delay action.

The act applies to these orders the same requirements for cease and desist orders under existing law, such as posting notice of the order and requiring immediate compliance by the recipient. As under existing law, the act also (1) requires the commissioner to hold a hearing within 10 days after the recipient receives the order and (2) allows the commissioner to ask the attorney general to bring an action to compel compliance.

Attorney General Action. The act allows the DEEP commissioner to ask the attorney general to bring an action in Hartford Superior Court against a violator of the release-based reporting and remediation requirements and the associated regulations. The court action may be to enjoin the violating action or to take remedial measures to prevent, control, or stop the violation. It must receive preference in trial order.

The act also requires, as under existing law, the attorney general to bring an action in Hartford Superior Court to collect civil or criminal fines for violations if asked to do so by the commissioner.

Civil Fines. Under the act, a violator is liable for a civil penalty of up to \$25,000 per violation as set by the court. Each day a violation continues is considered a separate offense, but the act exempts days during which a hearing or appeal of an order is pending.

Penalties. The act subjects a violator of its release requirements to the penalties associated with two existing criminal offenses as shown in the table below (CGS § 22a-438(b) & (c)).

Table: Criminal Offenses and Penalties for Release Requirement Violation

<i>Offense</i>	<i>Penalty</i>
Violation committed with criminal negligence	<p><i>First conviction:</i> up to \$25,000 fine per day of violation, up to one-year imprisonment, or both</p> <p><i>Subsequent conviction:</i> up to \$50,000 fine per day of violation, up to two years' imprisonment, or both</p>
Violation committed knowingly	<p><i>First conviction:</i> up to \$50,000 fine per day of violation, up to three years' imprisonment, or both</p> <p><i>Subsequent conviction:</i> class C felony, up to \$100,000 fine per day of violation, from one to 10 years' imprisonment, or both</p>

(It is unclear whether the penalties under this statute for criminally providing false information or discharging gasoline apply to the act (CGS § 22a-438(d) & (e)).)

Administrative Fines. The act also allows the DEEP commissioner to adopt a schedule of administrative fines for violations.

Liability Protections (§§ 21 & 22)

Prior Releases. Under certain conditions the act exempts a real property owner from liability for costs or damages to anyone other than the state, another state, or the federal government for a release on or coming from the property that occurred or existed before the owner took title to it.

The exemption applies if the owner (1) did not create the release or was not responsible for creating it under any other state law and (2) is not affiliated with anyone responsible for the release through a family, contractual, corporate, or financial relationship other than by the way the owner received or financed the property. The release on the property must also be remediated to the appropriate standards as shown by an LEP's verification that is either approved by the commissioner in writing or that the commissioner has decided not to audit. The act provides that remediation to the appropriate standards meets any requirements for public notice or notice to nearby property owners.

Under the act, an owner remains liable under either of the following situations:

1. The owner fails to appropriately file or comply with an EUR or comply with conditions of a commissioner-approved variance for the property.
2. The commissioner determines that the owner (a) provided information that the owner knew or had reason to know was false or misleading or (b) failed to abide by an existing covenant not to sue or liability protection provided under another state law (see "Existing Protections," below).

Existing Protections. The act specifies that it does not affect the following:

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1. covenants not to sue entered into by DEEP and property owners concerning contaminated properties (see BACKGROUND),
2. liability protection under (a) two existing laws for owners of property with contamination that preceded their ownership or (b) any brownfields program, or
3. other liability limitations or protections provided for under state law.

In addition, the act caps the amount of costs and damages for individuals who are innocent landowners under existing law and meet the act's requirements for liability protection. It makes these individuals liable to the state only at the amount provided under the existing law.

Other Provisions (§§ 22 & 23)

The act provides that its provisions do not (1) affect the DEEP commissioner's authority under other statutes or regulations or (2) allow for using or applying the innocent landowner defense under an existing law that, under specified circumstances, limits the liability of someone with a property interest for a spill or discharge on the property.

§ 1 — TRANSFER OF ESTABLISHMENT

By law, "transfer of establishment" generally means any transaction or proceeding that changes an establishment's ownership. Prior law's definition excluded more than two dozen specified circumstances (e.g., a change in ownership approved by the Probate Court).

The act eliminates or modifies several of these exemptions and creates one new one, as described below. It specifies that the definition applies to transactions or proceedings occurring up to the date DEEP adopts regulations implementing the release-based remediation program (see above).

Foreclosures

By law, "transfer of establishment" excludes, among other things, foreclosure of a municipal tax lien. The act specifies that the exclusion (1) applies only to tax lien foreclosures in accordance with a specific statute (CGS § 12-181) and (2) also applies to transferring title to a municipality by deed in lieu of foreclosure.

Transfer of Ownership

Under prior law, "transfer of establishment" excluded transfers of stock, securities, or other ownership interests representing less than 40% of the ownership of the entity owning or operating the establishment. The act increases this threshold to 50% or less.

Universal Waste

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The act eliminates an exemption for universal waste and replaces it by creating a similar exemption to the definition of “establishment” (see below).

Brownfields

Under prior law, “transfer of establishment” had three separate exemptions concerning brownfields. The act consolidates them into one exemption and makes conforming changes.

Under the act, the consolidated exemption includes acquiring, and all subsequent transfers of, an establishment (1) in the abandoned brownfield cleanup program or the brownfield remediation and revitalization program, if the establishment complies with applicable statutory requirements, or (2) by a Connecticut brownfield land bank. For land banks, the establishment must be participating in specified remediation or liability relief programs, and the transferor must be in compliance with the applicable program at the time of transfer or have completed the program's requirements.

Bankruptcy Court Transfers

Under prior law, “transfer of establishment” excluded the transfer of title from a bankruptcy court or municipality to a nonprofit organization. The act clarifies that the exclusion applies to transfers from (1) a municipality to a nonprofit organization or (2) any entity to a nonprofit organization, as ordered or approved by a bankruptcy court.

Smart Growth Projects

The act eliminates an obsolete exemption related to properties acquired for certain “smart growth” projects. By law, the DECD commissioner had to certify up to three of these projects to the governor by February 1, 2013.

LLC Name Change

The act excludes from “transfer of establishment” the change of an LLC’s name by filing an amendment to the company’s certificate of organization.

§§ 1 & 2 — DEFINITION OF ESTABLISHMENT

By law, “establishment” generally means real property on which, or a business operation from which, (1) more than 100 kilograms (kg) (about 220 pounds) of hazardous waste was generated or processed in any one month on or after November 19, 1980; or (2) a dry cleaning, furniture stripping, or vehicle body repair business operated.

Existing law has several exceptions to the above definition (e.g., waste generated from removing or abating building materials). The act adds an exception for universal waste, which replaces a similar exemption in prior law

from the definition of “transfer of establishment.”

The act also establishes specific requirements for determining what parts of certain multi-tenant properties, or properties occupied by the owner and a tenant, are considered establishments. Additionally, it specifies certain conditions under which parcels are no longer considered establishments.

Universal Waste

Prior law excluded universal waste from the definition of “transfer of establishment.” The act eliminates this exclusion and replaces it with a similar exception to the definition of “establishment.” The primary difference is that under prior law, a parcel qualifying for the universal waste exception was still an establishment, but the conveyance of it did not need to comply with the Transfer Act. Under the act, the parcel is not an establishment to begin with.

As under prior law, the universal waste exemption, with certain exceptions, applies to real property or a business operation that qualifies as an establishment solely from (1) generating more than 100 kg of universal waste in a calendar month; (2) storing, handling, or transporting universal waste generated at a different location; or (3) activities at a universal waste transfer facility. The exemption does not apply if (1) the property or business otherwise qualifies as an establishment; (2) there was universal waste contamination at or from the property or business; or (3) the waste was not properly recycled, treated, or disposed of at the property or business.

By law, “universal waste” includes batteries, pesticides, thermostats, lamps, and used electronics regulated as a universal waste under DEEP regulations.

Multi-Tenant and Certain Owner-Occupied Properties

Under the act, if a property or business operation is an establishment, then for purposes of filing Forms I-IV after October 1, 2020, the establishment includes the entire parcel or parcels on which the establishment is located, except as described below.

The act creates an exception for determining what parts of certain multi-tenant properties, or properties occupied by both the owner and a tenant, are considered establishments. It subjects these properties to the specific requirements shown in the table below.

Multi-Tenant and Certain Owner-Occupied Properties

<i>Property Description</i>	<i>Part Deemed an Establishment Under the Act</i>
Leased or previously leased to two or more tenants	Area on which the business operation is or was located, including (1) the entire part leased to the business operation and (2) any other area of the property used or occupied by the business operation
Occupied or was occupied simultaneously by the owner and a tenant	Same as above

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Property Description	Part Deemed an Establishment Under the Act
Commercial or industrial unit in a common interest community	The unit, limited common elements under exclusive use of the unit owner on which the establishment is or was operated, and any part of the common area used or occupied by the unit owner

The act also specifies that for business operations that are establishments, the establishment includes the (1) real property on which the business operation is or was located and (2) entire part of the property the business used or occupied.

Parcels no Longer Considered Establishments

Under prior law, an establishment transfer did not need to comply with the Transfer Act if certain conditions were met. Generally, these were (1) completing any necessary remediation, (2) DEEP approving the remediation or an LEP verifying it, and (3) no subsequent activities occurring that meet the criteria for being deemed an “establishment.”

The act instead deems these properties to no longer be establishments if, in addition to the above requirements, (1) the deadline for DEEP to audit an LEP verification passes without the commissioner requiring further action or (2) DEEP issues a no-audit letter or successful audit closure letter.

§§ 1-5 & 9 — COMMON INTEREST COMMUNITIES

Conveyance of Residential Unit (§§ 1 & 3)

Prior law excluded the conveyance of a unit in a residential common interest community from the definition of “transfer of establishment” if certain conditions were met (e.g., the declarant was a certifying party for remediation purposes).

The act makes the exclusion unconditional and instead requires the declarant, or the declarant’s immediate predecessor in title, to take the following actions before conveying a unit in a residential common interest community that is an establishment:

1. become a certifying party for purposes of investigating and remediating the parcel on which the community is located,
2. provide the financial assurance described below, and
3. record notice in the municipal land records that the parcel is being investigated and remediated according to the Transfer Act’s requirements.

The notice must identify the volume and page number of any recorded EUR. If the declarant does not record the notice, then the act allows the DEEP commissioner to record it or require an individual or entity authorized to act on behalf of the community to do so. Additionally, if the declarant or the declarant’s immediate title predecessor does not (1) become a certifying party for investigating and remediating the parcel on which the common interest community is located or (2) provide the financial assurance described below, then an individual or entity authorized to act on behalf of the community must give

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written notice of the failure to the DEEP commissioner before conveying a unit in the community.

Under the act, the financial assurance must (1) identify the DEEP commissioner as the beneficiary, (2) be in an amount and form approved by the commissioner, and (3) equal the cost of investigating and remediating the subject property to the Transfer Act's standards. The assurance must be used solely at the affected community to investigate and remediate the property for the unit owners' benefit. Prior law had similar financial assurance requirements.

Enforcement (§§ 2 & 9)

Existing law allows the DEEP commissioner to issue an order to, or request that the attorney general bring an action against, any person that violates the Transfer Act's provisions. It also subjects violators to a fine or civil penalty of up to \$25,000 per offense (CGS § 22a-438).

The act explicitly extends these enforcement powers to the above provisions on residential unit conveyances.

Public Offering Statements (§§ 3 & 5)

Under prior law, each time a seller conveyed to a purchaser a unit in a common interest community that is an establishment, the seller had to give notice to the purchaser summarizing (1) the status of the community's environmental condition, (2) any investigation or remediation activities, and (3) any resulting EURs.

The act instead requires that this notice be included in the public offering statement for residential common interest communities determined to be establishments as defined in the Transfer Act. (By law, a declarant must prepare a public offering statement before offering the public any interest in a unit.)

Under the act, the determination that the community is an establishment must be based solely on actual knowledge, a notice on the land records, or an inquiry to DEEP if there is no notice. The inquiry must ask whether a Form I, II, III, or IV for the community was submitted to DEEP.

Notice to Purchaser (§ 4)

Under existing law, before conveying or transferring the right to possess a unit in a common interest community, a unit owner generally must provide a purchaser or the purchaser's attorney with a certificate containing various statements. The act additionally requires that the statements include a (1) copy of any land records notice (as described above) and (2) statement with the volume and page number from the applicable municipal land records of any EUR encumbering the parcel or any portion of the parcel on which the community is located.

§§ 1-2 & 10-14 — OTHER TRANSFER ACT CHANGES

Environmental Use Restrictions (§§ 1-2 & 10-14)

Under DEEP regulations, an ELUR is an easement granted to DEEP by the property owner that is recorded on the municipal land records (Conn. Agencies Regs. § 22a-133q-1). ELURs are legal instruments used to prohibit activities that could increase people's risk of exposure to contamination.

For remediation under the Transfer Act, DEEP's RSRs may require an ELUR for portions of a property that cannot be fully remediated (Conn. Agencies Regs. §§ 22a-133k-1 to -3). Prior law had several references to ELURs (e.g., requiring an LEP to verify that an ELUR was recorded on the land records).

The act replaces several of these ELUR references with references to EURs. By law, EURs include (1) ELURs and (2) notices of activity and use limitations (NAULs) (CGS § 22a-133n). The changes appear to conform to proposed RSR and EUR regulation revisions, which allow for NAULs as an alternative to ELURs in certain circumstances. The primary difference between ELURs and NAULs is that NAULs do not require a transfer of an interest in land to the state.

Form IV (§ 1)

Under prior law, a person signing a Form IV had to agree to conduct post-remediation monitoring or natural attenuation monitoring in accordance with DEEP's RSRs. The act conforms the law to the RSRs by requiring the person to conduct groundwater monitoring instead of post-remediation monitoring or natural attenuation monitoring. It makes conforming changes to the Form IV verification, which LEPs submit to verify that the appropriate monitoring is complete. The act also requires, if applicable, LEPs to verify an EUR's recording, rather than that of an ELUR (see above).

BACKGROUND

Brownfields Working Group

By law, the working group examines the remediation and development of state brownfields, including permitting and liability issues, and annually reviews the Special Contaminated Property Remediation and Insurance Fund's progress (CGS § 32-770).

Covenant Not to Sue

A covenant not to sue is a form of liability protection that protects a holder from liability related to pollution that was attributed to the property before the covenant's effective date. It gives the property owner assurance that once a site is remediated to current standards, DEEP will not require additional cleanup.